

Corinne D. Orquiola, Esq. (SBN 226969)
Krohn & Moss, Ltd.
1112 Ocean Drive
Suite 301
Manhattan Beach, CA 90266
T: (323) 988-2400; F: (866) 861-1390
corquiola@consumerlawcenter.com
Attorneys for Plaintiff,
DEREK FRELIGH

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DEREK FRELIGH,)	Case No.:
)	
Plaintiff,)	COMPLAINT VERIFIED BY
)	PLAINTIFF
v.)	(Unlawful Debt Collection Practices)
)	
ROC ASSET SOLUTIONS, LLC,)	
)	
Defendant.)	

VERIFIED COMPLAINT

DEREK FRELIGH (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against ROC ASSET SOLUTIONS, LLC, (Defendant):

INTRODUCTION

- Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
- Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

JURISDICTION AND VENUE

- Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 *U.S.C. 1367* grants this court
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(1)*.

6 6. Declaratory relief is available pursuant to 28 *U.S.C. 2201 and 2202*.

7 **PARTIES**

8 7. Plaintiff is a natural person residing in Tracy, San Joaquin County, California.

9 8. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*
11 and *Cal. Civ. Code § 1788.2(h)*.

12 9. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)* and *Cal. Civ.*
13 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

14 10. Defendant is a national debt collection company located in Williamsville, New York.

15 11. Defendant acted through its agents, employees, officers, members, directors, heirs,
16 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
17 insurers.

18 **FACTUAL ALLEGATIONS**

19 12. In or around February 2015, Defendant placed collection calls to Plaintiff seeking and
20 demanding payment for an alleged consumer debt.

21 13. Plaintiff's alleged debt arises from transactions for personal, family, and household
22 purposes.

23 14. Defendant called Plaintiff's telephone number at 415-205-78XX.

24 15. In or around February 2015, Defendant called Plaintiff and left a voicemail message on
25 Plaintiff's answering machine. See transcribed voicemail message attached hereto as

1 Exhibit A.

2 16. In the voicemail message, Defendant failed to state the name of the company or to
3 meaningfully state that the call was from a debt collector. See transcribed voicemail
4 message attached hereto as Exhibit A.

5 17. In the voicemail message, Defendant directed Plaintiff to call back telephone number
6 855-676-0592, which is a number that belongs to Defendant. See transcribed voicemail
7 message attached hereto as Exhibit A.

8 18. In or around February 2015, Defendant called Plaintiff and left a voicemail message on
9 Plaintiff's answering machine. See transcribed voicemail message attached hereto as
10 Exhibit B.

11 19. In the voicemail message, Defendant failed to state the name of the company or to
12 meaningfully state that the call was from a debt collector. See transcribed voicemail
13 message attached hereto as Exhibit B.

14 20. In the voicemail message, Defendant directed Plaintiff to call back telephone number
15 855-676-0592, which is a number that belongs to Defendant. See transcribed voicemail
16 message attached hereto as Exhibit B.

17 21. In or around February 2015, Defendant called Plaintiff and left a voicemail message on
18 Plaintiff's answering machine. See transcribed voicemail message attached hereto as
19 Exhibit C.

20 22. In the voicemail message, Defendant failed to state the name of the company or to
21 meaningfully state that the call was from a debt collector. See transcribed voicemail
22 message attached hereto as Exhibit C.

23 23. In the voicemail message, Defendant directed Plaintiff to call back telephone number
24
25

1 855-676-0592, which is a number that belongs to Defendant. See transcribed voicemail
2 message attached hereto as Exhibit C.

3 24. Defendant is using false, deceptive and misleading means in connection with attempting
4 to collect a debt by not identifying the purpose of its phone calls or that they are an
5 attempt to collect a debt.

6 **COUNT I**
7 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

8 25. Defendant violated the FDCPA based on the following:

- 9 a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural
10 consequence of which is to harass, oppress, or abuse Plaintiff;
11 b. Defendant violated §1692d(6) of the FDCPA by failing to disclose the name of
12 the company in all communications placed with and for Plaintiff;
13 c. Defendant violated §1692e of the FDCPA by using any other false, deceptive, or
14 misleading representation or means in connection with the debt collection;
15 d. Defendant violated §1692e(11) of the FDCPA by failing to communicate and
16 contain the mini- Miranda warning: This is an attempt to collect a debt...
17 communication is from a debt collector.

18
19 WHEREFORE, Plaintiff, DEREK FRELIGH, respectfully requests judgment be entered
20 against Defendant, ROC ASSET SOLUTIONS, LLC, for the following:

21 26. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection
22 Practices Act,

23 27. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15*
24 *U.S.C. 1692k*,

25 28. Actual damages,

1 29. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
2 *15 U.S.C. 1692k*

3 30. Any other relief that this Honorable Court deems appropriate.

4 **COUNT II**
5 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
6 **PRACTICES ACT**

7 31. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as
8 the allegations in Count II of Plaintiff's Complaint.

9 32. Defendant violated the RFDCPA based on the following:

- 10 a. Defendant violated the §1788.17 of the RFDCPA by continuously failing to
11 comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*
12 *1692 et seq.*

13 WHEREFORE, Plaintiff, DEREK FRELIGH, respectfully requests judgment be entered
14 against Defendant, ROC ASSET SOLUTIONS, LLC, for the following:

15 33. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt
16 Collection Practices Act,

17 34. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices
18 Act, *Cal. Civ. Code §1788.30(b)*,

19 35. Actual damages,

20 36. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
21 Practices Act, *Cal. Civ Code § 1788.30(c)*, and

22 ///

23 ///

24 ///

25 ///

1 37. Any other relief that this Honorable Court deems appropriate.
2

3 RESPECTFULLY SUBMITTED,

4 DATED: February 9, 2016

KROHN & MOSS, LTD.

5
6 By: /s/ Corinne D. Orquiola

7 Corinne D. Orquiola
8 Attorney for Plaintiff
9 Krohn & Moss, Ltd.
10 1112 Ocean Drive
11 Suite 301
12 Manhattan Beach, CA 90266
13 T: (323) 988-2400 ; F: (866) 861-1390
14 corquiola@consumerlawcenter.com
15 Attorneys for Plaintiff
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA

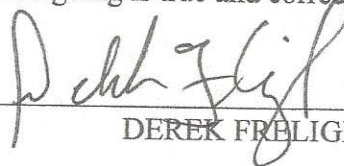
Plaintiff, DEREK FRELIGH, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, DEREK FRELIGH, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: _____

2/7/16



DEREK FRELIGH